APPENDIX A

Referee's Original Order

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

In Bankruptcy
No. 65 B 521

IN THE MATTER OF
HERBERT L. SARVER & DOYLE D. SARVER, d/b/a G. P. PERKINS
Bankrupt

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF APPROVAL OF REPORTS AND ACCOUNTS, ALLOWANCES OF FEES AND EXPENSES OF ADMINISTRATION, AND OTHER BUSINESS AT FINAL MEETING OF CREDITORS.

At Dixon in said District and Division on the 24th day of April, 1968.

This matter coming on for hearing on December 21, 1968 at the final meeting of creditors, after due notice by mail to creditors as required by law, and judicial notice having been taken of the pleadings, reports and other documents on file, and from such other evidence as has been adduced, the Court, being fully advised in the premises, finds that the net realization in this estate is in the sum of $9,775.61 and from this finding, the Court concludes that the allowance made in this order for the Referees' Salary & Expense Fund is based on said sum and is proper.

IT IS HEREBY ORDERED THAT:

1. The following reports and accounts be and they are hereby approved: Final Report and Account of ....., Receiver and Final Report and Account of Ray Marelli, Trustee.

2. The allowances of fees and charges set forth in this paragraph are proper and the trustee herein is hereby authorized and directed to make the following disbursements from the funds remaining in his hands for expenses of administration:

Receiver's Fee	.....	
Receiver's Cash Advances	.....	
Receiver's Unpaid Liabilities	.....	.....
Trustee's Fee	107.29	
Trustee's Cash Advances	.....	.....
Trustee's Unpaid Liabilities	36.50	143.79
Court Reporter's Services	.....	.....
Referees' Salary & Expense Fund		281.14
(Check to be made payable to Elbert A. Wagner, Jr., Clerk of U. S. District Court)		
Attorney for Receiver—Fee	.....	
Attorney for Receiver—Expenses	.....	.....
Attorney for Trustee—Fee	1,319.90	
Attorney for Trustee—Expenses	113.78	1,432.68
Special Attorney for Trustee—Fee	126.72	
Attorney for (Nettles)—Expenses	.....	126.72
Special Attorney for Trustee (Nack)—Fee	352.50	
Expenses	51.95	404.45
Expenses paid previously (including receivership expenses)		1,851.05
TOTAL ADMINISTRATIVE EXPENSES		$4,240.42

3. Of the balance then remaining in the hands of the Trustee, Namely $1,890.03, final dividends are declared and ordered paid as follows:

Character of Claims	*Total Amt. Allowed*	*Dividend Amt.*	*Declared Per-centage*
Priority wage claim	$ 100.00	$ 100.00	100%
Priority tax claim	218.83	218.83	100%
General unsecured claims	$7,824.73	$1,571.20	20.08%

4. The Receiver herein be and he is hereby discharged and his bond cancelled.

Upon the filing of a Supplemental Report and Account by the Trustee herein, and submission of cancelled checks showing that payments ordered herein, and disbursement of all moneys in said estate has been completed, and that nothing further remains to be done, said Trustee will be discharged, his bond cancelled, and the sureties thereon released.

ENTER:

Sherwood Dixon

Referee in Bankruptcy

APPENDIX B

Referee's Report

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

In Bankruptcy
No. 65 B 521

IN THE MATTER OF
HERBERT L. SARVER & DOYLE D. SARVER, d/b/a G. P. PERKINS
Bankrupts.

To the Presiding Judge of said Court:

The following is submitted in compliance with Bankruptcy Rule 25(c)(2):

1. Total proceeds realized, per report		$9,755.61
Accounts sold at final meeting		20.00
Total		$9,775.61
2. Expenses of administration		
All expenses of receivership	1,707.55	
Expenses of trusteeship, per report	143.50	
Unpaid obligations		
Referees' Salary & Expense Fund	244.39	
Clerk: claims & notices	36.75	
Expenses of: Trustee	36.50	
Atty. Babb	113.78	
Atty. Nack	51.95	
Fees recommended	1,906.41	4,240.83

3. Percentage of total for administration 43.4%
4. Required for 1% dividend 78.24
5. Amount remaining for creditors after payment of allowances 1,890.03
   Dividends payable: Priority claims 100%
   General claims 20.08%
6. Prior dividends none

7. Allowances	*Applied for*	*Recommended*
Marelli, Trustee	357.66	107.29
Babb, atty. for trustee	4,733.60	1,319.90
Nettles, atty. for trustee	422.40	126.72
Nack, atty. for trustee	1,175.00	352.50
8. Compensation previously paid		
Marelli, receiver	212.19	
Babb, atty. for receiver	600.00	

9-10. Other information: reasons for recommendation.

When these bankrupts were adjudicated an application for a receiver was also filed. The difficulties and complications were apparent so I appointed a good man and authorized an attorney. There were conflicting claims and danger of loss of property so they immediately undertook a sale free and clear of liens with claims transferred to the proceeds and were so well along with the work that the sale was held within a matter of days after the first meeting.

There were eleven known or suspected secured creditors. Four of these and four others filed reclamation petitions and all were brought into the proceedings. All eight were contested by the trustee. Five were defeated and only three, for a total of $1,644.75 were allowed. One of those defeated was Mr. Perkins, who made most of the trouble in this case.

The most charitable thing I can say about the Sarver Brothers is that they just are not very bright. Mr. Perkins had sold them his business, which they operated under his name, but what they bought was a graveyard of worn out excavating and earth moving machinery. The only hope for any recovery for creditors lay in putting it in salable condition. The receiver-trustee exercised initiative and worked hard, even putting together usable parts of equipment made by different manufacturers. The result was a very successful sale, which brought in $8,609.75. But of course the expense of receivership and sale were heavy.

Mr. Perkins claimed all of the property except household goods and a few other articles, under a contract which he brandished from time to time but declined to exhibit until the contest of his reclamation petition. It provided for a sale price of $30,000.00 with a small down payment and the balance, by installments, *out of the profits from the business.* As the buyers went bankrupt within, I think, six months the answer seemed obvious. When this contest developed, I authorized the trustee to employ Mr. Nettles as additional counsel. Mr. Nettles died suddenly and Mr. Nack succeeded him. I found against Mr. Perkins, who petitioned for review. My findings were affirmed by Judge Parsons. Just within the time for so doing Mr. Perkins took his case to the Court of Appeals. Months of delay and of sparring and conferring among the attorneys followed. Finally they reached an agreement to compromise for $2,000.00 and I approved it. I felt that the trustee would win but further expense to the creditors seemed unjustifiable.

Then the trustee, among other things, contested seven claims for a total of $3,972.00. Six of these he completely defeated and one labor claim for $500.00 was allowed, on contest, for only $100.00.

I recite this long story to show that the trustee and his attorneys worked long, hard and successfully. There are no duplications of attorneys' fees. Except for a few conferences, they worked separately.

However one of the elements, "success achieved" is usually equated with results obtained for general creditors. At the end of all of this work there is very little left for general creditors. By recommending that the trustee and attorneys receive 30% of the fees applied for there will be only enough left to pay a dividend of 20.08%

Dated at Dixon, Illinois, April 24, 1968.

Referee in Bankruptcy
Sherwood Dixon

APPENDIX C

District Court's Order on Petition for Review

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

Name of Presiding Judge,
Honorable Alexander J. Napoli

Cause No. 65 B 521 Date June 18, 1968

In the matter of Herbert L. Sarver & Doyle D. Sarver, d/b/a G. P. Perkins, Bankrupts.

This cause coming to be heard on a petition for review of an order entered by the referee on April 24, 1968; and also pursuant to Rule 25(f)(2) of the Bankruptcy Rules of this Court, for review of the same order; the time for filing of briefs pursuant to Rule 26(e) of the Bankruptcy Rules of this Court having elapsed; the Court having considered the entire file in this matter, IT IS ORDERED that the fee allowed to the trustee be increased to $357.66; that the fee allowed to David Babb, attorney for the trustee, be reduced to $1000; and that all other portions of the referee's order of April 24, 1968, be, and are hereby, affirmed. Order cause remanded to referee for entry of appropriate final order.

Alexander J. Napoli
Judge

APPENDIX D

Referee's Amended Order

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

In Bankruptcy
No. 65 B 521

IN THE MATTER OF
HERBERT L. SARVER & DOYLE D. SARVER, d/b/a G. P. PERKINS
Bankrupts.

AMENDED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF APPROVAL OF REPORTS AND ACCOUNTS, ALLOWANCES OF FEES AND EXPENSES OF ADMINISTRATION, AND OTHER BUSINESS AT FINAL MEETING OF CREDITORS.

At Dixon in said District and Division on the 24th day of June, 1968.

This matter coming on for hearing on December 21, 1967 at the final meeting of creditors, after due notice by mail to creditors as required by law, and judicial notice having been taken of the pleadings, reports and other documents on file, and from such other evidence as has been adduced, the Court, being fully advised in the premises, finds that the net realization in this estate is in the sum of $9,775.61 and from this finding, the Court concludes that the allowance made in this order for the Referees' Salary & Expense Fund is based on said sum and is proper.

IT IS HEREBY ORDERED THAT:

1. The following reports and accounts be and they are hereby approved: Final Report and Account of ....., Receiver and Final Report and Account of Ray Marelli, Trustee.

2. The allowances of fees and charges set forth in this paragraph are proper and the trustee herein is hereby authorized and directed to make the following disbursements from the funds remaining in his hands for expenses of administration:

Receiver's Fee	.....	
Receiver's Cash Advances	.....	
Receiver's Unpaid Liabilities	.....	.....
Trustee's Fee	357.66	
Trustee's Cash Advances	.....	
Trustee's Unpaid Liabilities	36.50	394.16
Court Reporter's Services		.....
Referees' Salary & Expense Fund (Check to be made payable to Elbert A. Wagner, Jr., Clerk of U.S. District Court)		281.14
Attorney for Receiver—Fee	.....	
Attorney for Receiver—Expenses	.....	.....
Attorney for Trustee—Fee	1,000.00	
Attorney for Trustee—Expenses	113.78	1,113.78
Special Attorney for Trustee (Nettles)—Fee	126.72	
Expenses	.....	126.72
Special Attorney for Trustee (Nack)—Fee	352.50	
Expenses	51.95	404.45
Expenses paid previously		1,851.05
TOTAL ADMINISTRATIVE EXPENSES		$4,171.30

3. Of the balance then remaining in the hands of the Trustee, Namely $1,959.56; final dividends are declared and ordered paid as follows:

Character of Claims	*Total Amt. Allowed*	*Dividend Amt.*	*Declared Percentage*
Priority Wage Claim	100.00	$ 100.00	100%
Priority Tax Claim	218.83	$ 218.83	100%
General Unsecured Claims	7,824.73	$1,640.73	20.9685%

(Secured claims of $3,644.75 paid previously)

4. The Receiver herein be and he is hereby discharged and his bond cancelled.

Upon the filing of a Supplemental Report and Account by the Trustee herein, and submission of cancelled checks showing that payments ordered herein, and disbursement of all moneys in said estate has been completed, and that nothing further remains to be done, said Trustee will be discharged, his bond cancelled, and the sureties thereon released.

ENTER:

Sherwood Dixon

Referee in Bankruptcy

APPENDIX E

Order Sought to be Reviewed

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago 10, Illinois
February 27, 1969

Before

HON. JOHN S. HASTINGS, *Senior Circuit Judge*
HON. ROGER J. KILEY, *Circuit Judge*
HON. THOMAS E. FAIRCHILD, *Circuit Judge*

No. 17083

In the Matter of
HERBERT L. SARVER & DOYLE D. SARVER, d/b/a G. P. PERKINS
No. 65 B 521 *Bankrupts.*

DAVID R. BABB, Attorney for Trustee,
Appellant.

Appeal from the United States District Court
for the Northern District of Illinois,
Western Division.

ORDER

In this bankruptcy proceeding, No. 65 B 521 pending in the United States District Court for the Northern District of Illinois, Western Division, Ray Marelli was duly appointed trustee and David R. Babb as attorney for the trustee by the Honorable Sherwood Dixon, Referee. After

extended litigation, the Referee approved the final report and account of the trustee and, *inter alia*, made an allowance of $107.29 to the trustee for services, this being 30% of the requested amount of $357.56, and $1319.90 to the attorney for the trustee, this being 28% of the requested amount of $4733.00. After payment of all expenses and allowances of costs of administration (including a receivership and a trusteeship) and priority claims in full, there remained a dividend of 20.08% payable to creditors with general claims.

Referee Dixon acknowledged that the net result was attributable to the long, hard and successful individual work of the trustee and his attorney, without duplication of attorney's fees. However, the Referee felt constrained to equate such "success achieved" with results obtained for the general creditors and made the foregoing drastic cuts in the requested fees for services. There is no cause to believe that the claims were not otherwise proper and allowable in full.

The trustee and his attorney petitioned the district court for review of the order of the Referee making the allowances of fees. The court, without any statement of reasons, summarily ordered that the fee allowed to the trustee be *increased* to $357.66 (the original amount requested); that the fee allowed to the attorney for the trustee be *reduced* to $1000 (from $1319.90 allowed by the Referee); and otherwise approved the report.

On remand, the Referee ordered the allowances as fixed by the district court. Attorney Babb, *pro se*, alone appeals. No appearance or brief was filed by an appellee. We heard appellant Babb on oral argument.

Our examination of the record and appellant's brief convinces us that the district court, in the absence of any showing or finding that the Referee abused his discretion in awarding the attorney's fee in the amount of $1319.90, erred in reducing the fee to $1000. We find no error in the increase allowed the trustee. Accordingly, the Referee's order on remand fixing the fee for the trustee's attorney in the sum of $1000 is vacated. This matter is remanded to the district court with directions to reinstate the allowance of the fee of David R. Babb for his services as attorney for the trustee in the sum of $1319.90. See Jacobowitz v. Double Seven Corporation, 9 Cir., 378 F. 2d 405 (1967).

Vacated and Remanded.